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July 16, 2015

## U.S. ex rel. Kester v. Novartis Pharmaceuticals Corp. No. 11 Civ. 8196 (CM) (JCF)

Dear Judge Francis:

We represent Defendant Novartis Pharmaceuticals Corporation (“Novartis”) in the above-referenced matter. We write in response to the July 15, 2015 letter submitted to the Court by Relator David M. Kester. (ECF No. 483.) For the reasons set forth below, we respectfully request that the Court deny the relief sought.

In his letter, Relator asks that the Court order Novartis to inform Relator by July 24, 2015, whether it will assert a good faith or advice of counsel defense with respect to the non-intervened drugs (Gleevec, Tasigna and TOBI) and to produce any corresponding waiver documents by July 31, 2015. As we previously informed Relator, the decision to waive privilege is a difficult one and although Novartis is considering the issue as quickly as it can, it needs until August 15 to reach a final determination. We believe this date provides the parties more than enough time to complete fact discovery on schedule, even if Novartis chooses to waive privilege. The current deadline for the close of fact discovery is October 30, 2015, which gives Relator two and a half months to complete discovery related to any legal advice upon which Novartis chooses to rely.

We further note that in an effort potentially to expedite our analysis of the waiver issue, Novartis asked Relator to provide clarification as to exactly what conduct Relator is challenging with respect to each of the non-intervened drugs. Currently, the broad allegations regarding the purported kickback scheme have made it challenging for Novartis to determine what legal advice may be at issue, let alone whether it should

waive privilege over such advice. Relator did not respond to our request for clarification but rather submitted his letter seeking relief from the Court.

Respectfully,

A handwritten signature in black ink, appearing to read "RGS".

Rachel G. Skaistis

The Honorable James C. Francis  
United States Magistrate Judge  
Daniel Patrick Moynihan United States Courthouse  
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VIA ECF

Copies to:

All Counsel of Record

VIA ECF AND EMAIL